

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:23-CV-822-D

ABRAHAM SHAVIN, individually and)
for others similarly situated,)
)
Plaintiff,)
)
v.)
)
PRECISION FRANCHISING, INC.,)
)
Defendant.)

ORDER

On April 1, 2023, Abraham Shavin (“Shavin” or “plaintiff”) filed a “FLSA Collective and Class Action Complaint,” individually and for others similarly situated, against Precision Franchising, Inc. (“Precision” or “defendant”) alleging violations of the Fair Labor Standards Act (“FLSA”) and North Carolina Wage and Hour Act (“NCWHA”) [D.E. 1]. On June 5, 2023, Precision moved to dismiss the NCWHA claims for failure to state a claim upon which relief can be granted [D.E. 14] and filed a memorandum in support [D.E. 15]. See Fed. R. Civ. P. 12(b)(6). On June 14, 2023, Shavin responded in opposition [D.E. 17]. On July 3, 2023, Precision replied [D.E. 20].

Precision moves to dismiss Shavin’s NCWHA claims as expressly exempted by section 95-25.14(a) of the NCWHA or, alternatively, preempted by the FLSA. See [D.E. 15] 8–14. Shavin acknowledges the NCWHA’s exemption provision and responds that he only alleges the NCWHA claims in the alternative if the court finds that Precision is exempt from the FLSA. See [D.E. 17] 3–5. Shavin concedes that it “may be appropriate to limit Plaintiff’s claims” to the FLSA if “defendant admits” that the FLSA applies to it. Id. at 4–5.

In Precision's reply, it "expressly stipulates as to the coverage of the FLSA." [D.E. 20] 3. Precision states that it will be "bound to its concession as it relates to FLSA coverage" and will not seek to argue that it is exempt from FLSA coverage. Id. at 4. In light of Precision's stipulation that it is covered under the FLSA and Shavin's recognition that his NCWHA claims are exempt or preempted under the FLSA if Precision stipulates to FLSA coverage, the court grants Precision's motion to dismiss plaintiff's NCWHA claims.

In sum, the court GRANTS defendant's motion to partially dismiss [D.E. 14] and DISMISSES WITH PREJUDICE plaintiff's NCWHA claims and all class allegations relating to the NCWHA claims.

SO ORDERED. This 13 day of July, 2023.

James C. Dever III
JAMES C. DEVER III
United States District Judge